



Order in the *City of Tulsa* case, which merely required production of balance sheets. Ex. A. Accordingly, LCvR37.1 seemingly obliges the Court to refuse to consider the instant Motion. Should the Court choose to consider the Motion, Peterson further states as follows:

### **I. BACKGROUND**

Nearly five weeks after the deadline for their damage expert report deadline and two years after the issue ripened for consideration, Plaintiffs bring this instant Motion claiming that the financial information sought is necessary to bolster the opinions of their expert David Payne. Notwithstanding this purported necessity, Mr. Payne has unconditionally prepared opinions regarding Peterson's putative ability to pay a punitive damage award should Plaintiffs demonstrate that, despite the wholesale absence of any individualized, party-specific evidence, Peterson has acted with the requisite culpability required by OKLA. STAT. tit. 23, § 9.1. *See* Dkt. #1869-2, Ex. F. Of note, guided by this Court's precedent, Peterson has never disputed that Plaintiffs are entitled to some financial information; and, indeed, Peterson has produced five balance sheets to Plaintiffs, all of which show Peterson's net worth.<sup>1</sup> In support of their Motion, however, Plaintiffs have failed to state a single reason for the need for information beyond that already produced under this Court's precedent. To the contrary, Plaintiffs rely on this same precedent to support its misguided contention that it is entitled to nearly unlimited discovery of Peterson's financial information.

---

<sup>1</sup> Peterson originally produced a then-current balance sheet (Bates #PFIRWP-63693) to Plaintiffs in response to their RFP No. 107 of July 10, 2006. Peterson subsequently produced balance sheets for fiscal years 2004 through 2007 (Bates #PFIRWP-93419—93426). At the time of the second production and continuing through the present, Peterson's fiscal year 2008 balance has not been prepared and is, thus, not available for production to Plaintiffs. Peterson attempted in good faith to reach an agreement with Plaintiffs allowing them to supplement their damage report after production of the 2008 balance sheet, *see* Ex. B; however, the offer was never accepted.

In this regard, Plaintiffs rely in significant part on an Order issued in the *City of Tulsa v. Tyson Foods, Inc.*, a case that Plaintiffs so vigorously and repeatedly contend is controlling precedent in the instant case. While Peterson denies that the prior litigation is related to or dispositive of the material issues in this case, it nonetheless agrees with Plaintiffs that, with respect to the discovery of financial information, the *City of Tulsa* case is controlling authority and, indeed, is the measure by which Peterson determined its obligation to produce the financial information which it has previously produced to Plaintiffs over the two year period that Plaintiffs' RFP Nos. 107 and 11 have been outstanding.

For purpose of background, Peterson is a privately owned, family run business located in northwest Arkansas which was founded in 1939, and until recently, was an "integrated" poultry company, competing with the other defendants named by Plaintiffs in this lawsuit. In response the aforementioned RFPs, Peterson asserted the confidential, proprietary nature of the information sought by Plaintiffs and further objected to the discovery requests based on relevance. It has continued to assert and maintain these objections since initially making them in 2006. *See* Ex. C. Nonetheless, notwithstanding the objections, Peterson has produced information to Plaintiffs based on the extant authority of this Court, requiring limited production of balance sheet information sufficient to evaluate a party's net worth. Of note, neither Plaintiffs nor their expert have claimed that the prior production is insufficient for an evaluation of the punitive damage issue cited as the justification for the instant Motion.

In any event, Plaintiffs' Motion to Compel should be denied in its entirety. Foremost, as previously indicated, Peterson has produced the financial information it is required to produce in response to a claim for punitive damages under the precedent of this Court. Similarly, Plaintiffs have not stated any reason or justification that might otherwise require Peterson to produce more

financial information than it already has provided. Moreover, coming two years after Peterson's objections to the subject RFPs and several weeks after their damage report deadline, Plaintiffs' Motion is untimely and amounts to a waiver of this particular issue. Plaintiffs have had months to raise the issues contained in their Motion, but without explanation, they have waited to raise them only *after* their expert has rendered his punitive damage opinions. Finally, the Court has previously ruled that supplemental reports, such as that contemplated by Plaintiffs, will be looked upon disfavorably. For these reasons, as further discussed herein, Plaintiffs' Motion should be denied.

## II. ARGUMENT AND AUTHORITY

### a. Peterson has produced the financial information to which Plaintiffs are entitled under the extant authority of this Court

Peterson contends that it has satisfied its burden to produce financial information in response to Plaintiffs' discovery requests. In this case, as in the *City of Tulsa* case relied upon by Plaintiffs, Peterson produced balance sheets for a five-year period. Moreover, during the meet and confer process, Plaintiffs tacitly agreed to accept this production in satisfaction of the aforementioned RFPs.<sup>2</sup> In any event, Plaintiffs have failed to state any reason why they are entitled to more information than that generally allowed in similar cases, especially when over two years have passed since the information was first sought.

---

<sup>2</sup> Two separate attorneys in Plaintiffs' South Carolina law firm primarily addressed these issues, taking seemingly inconsistent positions regarding the scope of the materials requested. The attorney handling the written responses demanded production of financial information of nearly unlimited scope. The separate attorney handling the laboring oar on the meet and confer seemed, at times, satisfied with the balance sheet information produced by Peterson. *See* Ex. A. Of note, a third attorney for Plaintiffs, who is located in Tulsa and was not involved in any of the verbal or written communications, filed the instant Motion, inclusive of the above-referenced "meet and confer" certification.

As noted above, the issue now before the Court has been addressed and settled in other recent litigation in this jurisdiction in which a plaintiff has sought punitive damages. In each of those cases, the result has been the same: The Court has ordered the production of the party's balance sheet or, in one instance, balance sheets. *See Hightower v. Heritage Academy of Tulsa, Inc.*, 2008 WL 2937227 (N.D. Okla. July 29, 2008); *Toussaint-Hill v. Montrereau in Warren Woods*, 2007 WL 3231720 (N.D. Okla. Oct. 29, 2007); *City of Tulsa v. Tyson Foods, Inc.*, Case No. 01-CV-900-B(X), Dkt. #96 (N.D. Okla. May 3, 2002); *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 199 F.R.D. 677 (N.D. Okla. 2001).<sup>3</sup>

As noted above, Plaintiffs base their instant Motion on an Order issued by the Court in the *City of Tulsa* case, notwithstanding that the aforementioned Order supports the position taken by Peterson with regard to production of its financial information. *See City of Tulsa v. Tyson Foods, Inc.*, Case No. 01-CV-900-B(X), Dkt. #96 (N.D. Okla. May 3, 2002). After the defendants refused to produce any financial information, the plaintiffs in the *City of Tulsa* moved the Court to compel production of "detailed financial information concerning each of the Defendants" in support of their punitive damage claim and the "economic feasibility of remedies which might be imposed . . . to correct the alleged problems claimed by Plaintiffs in their complaint." *Id.* at 5.<sup>4</sup> The detailed financial information sought in the case included "annual

---

<sup>3</sup> The only other case cited by Plaintiffs in their Motion purports to be an opinion of this Court, *see* Motion (Dkt. #1869) at 4; however, upon closer examination, the case is actually an opinion of the Western District of Oklahoma. *See American Ben. Life Ins. Co. v. Ille*, 87 F.R.D. 540 (W.D. Okla. 1978). In any event, the *Ille* court simply reinforces the opinions of this Court that the proper scope of discovery on the issue of punitive damages is limited to discovery of "a litigant's financial worth." *Id.* at 543.

<sup>4</sup> Of note, unlike the instant case, the *City of Tulsa* plaintiffs' Motion to Compel was filed soon after the defendants had submitted their written discovery responses; indeed, the plaintiffs suggest in their Motion that it was filed just over one month after the written responses. *City of*

financial reports, income statements and balance sheets since 1996, as well as the identity of Defendants' independent accountants or financial consultants." Plaintiffs' Motion to Compel, *City of Tulsa v. Tyson Foods, Inc.*, Case No. 01-CV-0900-B(X), Dkt. #76 at 2.

Notwithstanding this overly broad request for financial information, which is dwarfed by Plaintiffs' instant request, the Court concluded that "some discovery" of financial condition of the defendants should be permitted. *City of Tulsa*, Dkt. #96 at 5. However, the Court limited the discovery to matters pertaining to the defendants' "net worth,"<sup>5</sup> to wit: "*Plaintiffs have not articulated sound reasons for permitting detailed discovery of the Defendants' private financial affairs.* Based upon Plaintiffs' arguments, it would appear that financial statements reflecting the Defendants' net worth from 1996 forward would be sufficient for the Plaintiffs' needs." *Id.* at 6 (emphasis added). Accordingly, the Court ordered the defendants to produce balance sheets for the five-year period beginning in 1996. *Id.* Peterson has done the same in this case. *See* Note 1, *supra*, describing prior document production.

Of note, the *City of Tulsa* case is not the only time the Court has addressed the issue of the proper scope of discoverable financial information. In *Cardtoons v. Major League Baseball Players Association*, 199 F.R.D. 677 (N.D. Okla.), the plaintiff filed a Motion to Compel the defendant to produce a variety of financial information. Again, the Court found that, generally,

---

*Tulsa v. Tyson Foods, Inc.*, Case No. 01-CV-0900-B(X), Dkt. #76 at 1-2. Certainly, Plaintiffs in this case cannot claim the same timeliness, having filed their instant Motion over two years after Peterson filed its written responses and, indeed, over two years after Plaintiffs made their initial request for supplementation of those responses.

<sup>5</sup> "Net worth" is generally defined as "[t]he amount by which assets exceed liabilities." BLACK'S LAW DICTIONARY 1041 (6<sup>th</sup> ed. 1990); *see W.H. Miner, Inc. v. Peerless Equip. Co.*, 115 F.2d 650, 655 (7<sup>th</sup> Cir. 1940) (noting that the "net worth of [a] company was the remainder after deduction of liabilities from assets"). In other words, net worth is the information contained in a company's balance sheet.

financial information is discoverable where a litigant has asserted a claim for punitive damages; however, the Court nonetheless limited the plaintiff's discovery to a single balance sheet. *Id.* at 686. In limiting the discovery of the financial information, the Court noted, "Plaintiff has not established that the documents are relevant or probative." *Id.* Like the *Cardtoons* plaintiff, Plaintiffs too have failed to demonstrate that the additional financial information they seek is either relevant or probative, especially at this late date, to their expert's opinions on punitive damages.

Furthermore, in 2007, the Court reached a similar, but conditioned, conclusion in the *Toussaint-Hill* opinion, *supra*, with regard to a defendant's obligation to produce financial information, to wit:

Oklahoma law requires the production of financial information where a request for punitive damages is pled. However, the court finds production of this financial information is appropriate only after a dispositive ruling on the issue of punitive damages. Should the court allow the claim for punitive damages to proceed, *Defendant is directed to produce to Plaintiff one balance sheet showing net worth for the year 2006* within 20 days of the court's order allowing Plaintiff's punitive damages claim to proceed.

*Toussaint-Hill*, 2007 WL 3231720, at \*1 (emphasis added). Again, the Court required, although conditionally, the defendant to produce a single balance sheet, which is less information than Peterson has produced to Plaintiffs in this case.

Finally, as in the instant case, the plaintiff in the *Hightower* case sought discovery of the defendant's financial records for purposes of plaintiff's prayer for punitive damages. As Plaintiffs indicate in their Motion, Dkt. #1869 at 4, the *Hightower* court stated, "Financial records are discoverable when punitive damages are at issue." *Hightower*, 2008 WL 2937227, at \*1. Notably, Plaintiffs omit the penultimate sentence of the paragraph containing the above-quoted language, which reads as follows: "*However, discovery of that information is reasonably*

*limited to Defendant's balance sheet for 2008 and its net worth for 2008."* *Id.* (emphasis added).<sup>6</sup> In other words, the Court required the defendant to produce less information than Peterson has already produced to Plaintiffs in response to RFP Nos. 107 and 11.

In the instant case, Plaintiffs have not and cannot articulate a sound reason for the discovery they seek in their Motion to Compel. The only reason Plaintiffs cite for the discovery is their punitive damages claim, which is the same reason asserted by the movants in the foregoing cases. Plaintiffs' unexceptional reason for invading the private financial affairs of a closely held, family run business such as Peterson does not justify an Order compelling Peterson to produce fully audited financial statements and tax returns. To the contrary, as discussed above, the parties in this Court's precedent—citing the same reason Plaintiffs cite here—were only allowed to discover limited financial information related to net worth, *i.e.*, limited balance sheet information. In each case, the limited net worth information defined the scope of discovery on the issue of punitive damages. As such, Peterson has satisfied its burden to produce the financial information, *i.e.*, balance sheets showing its net worth, to which Plaintiffs are entitled to under the precedent of this Court.

Moreover, unlike the movants in the foregoing cases and *without explanation*, Plaintiffs have filed their instant Motion over two years after the issues now raised became ripe for the Court's consideration. Likewise, *without explanation*, the Motion comes over one month after the deadline for Mr. Payne's expert report where he was nonetheless able to opine regarding Peterson's net worth and putative ability to pay a punitive damage award in the event Plaintiffs sustain their burden on the claim: "[A]t least \$[] million should be available to support

---

<sup>6</sup> Besides overstating the position taken by the Court, Plaintiffs also fail to explain why, if contemporaneous economic conditions have a bearing on the discoverability of financial information, the *Hightower* opinion does not contain a discussion of this purported factor.



[Peterson's] Ability to Pay [a punitive damage award]. [Peterson's] solvency in the form of its \$[] million of Net Worth . . . supports the viability of their [*sic*] enterprise and it's [*sic*] Ability to Pay at levels which do not impair its operations from continuing to function as a going concern." Dkt. #1869-2, Ex. F at 9 (filed under seal).<sup>7</sup>

Furthermore, neither Plaintiffs in their Motion nor Mr. Payne in his affidavit accompanying the Motion offer any reason as to why the foregoing opinion regarding Peterson's alleged ability to pay a punitive damage award is not sufficient for their burden under OKLA. STAT. tit. 23, § 9.1. Indeed, in Mr. Payne's report, he effectively endorses the sufficiency of his opinions on the purported ability of Peterson to pay punitive damages: "[O]ur opinions are estimates only for use and assistance in assessing punitive damages, if any, against [Peterson]." Dkt. #1869-2, Ex. F at 9 (filed under seal). While Mr. Payne indicates that he would consider additional information, such as that requested by Plaintiffs, he does not limit the purported veracity of his opinions to the receipt of such additional information.

In short, Peterson has produced the information required of it by the Court's precedent on the issue of punitive damages, and Plaintiffs have not articulated sound reasons—indeed, any reason—for compelling Peterson to produce more information than that required of prior litigants before this Court on the same issue. Similarly, Plaintiffs have failed to articulate sound reasons for requiring the production of such financial information either two years after the issue

---

<sup>7</sup> It must be noted that Mr. Payne's opinions are not based directly on the balance sheets Peterson produced to Plaintiffs. Indeed, Mr. Payne manipulated the "net worth" reported on Peterson's most recent balance sheet, increasing—and, thus, overstating—it by some 103%. In addition to the reason already stated, the fact that, were Peterson required to produce additional information, Mr. Payne would almost certainly manipulate the reported information to serve Plaintiffs' ends is yet another reason that Plaintiffs' Motion should be denied. On this note, it is hardly surprising, then, that Mr. Payne did not qualify his opinions regarding Peterson's purported ability to pay a punitive damage award.

became ripe or over one month after the deadline for their damage expert's report. As such, Plaintiffs' Motion to Compel should be denied in its entirety.

**b. Plaintiffs' instant Motion is untimely and should be denied**

Under separate precedent of this Court, Plaintiffs have effectively waived the discovery issues raised in their instant Motion. To the extent that Plaintiffs have not waived the dispute, their Motion is nonetheless untimely, coming some two years after this issue was ripe for consideration. As such, the Motion should be summarily denied.

In this regard, the Court has previously denied a litigant's Motion to Compel under closely analogous circumstances. *See Continental Indus., Inc. v. Integrated Logistics Solutions, LLC*, 211 F.R.D. 442 (N.D. Okla. 2002). In *Continental*, the plaintiff had filed its federal complaint against the defendants in October 2000, asserting various claims for relief. *Id.* at 443. In the course of the litigation, the plaintiff requested documents on two separate occasions pertaining to an alternative claim based on a corporate veil-piercing theory; these documents requests were made in April 2001 and September 2001. *Id.* In response to both requests, the defendants timely objected to the document requests based on relevancy, among other bases, and declined to produce any documents. *Id.* Subsequently, in January 2002, the plaintiff obtained leave to file an amended complaint based on their veil-piercing theory, adding another company affiliated with the defendants. *Id.*

During this period, the defendants maintained their objections to the requested discovery. *Id.* Nonetheless, having left the objections unchallenged in the interim, the plaintiff filed its motion to compel production of the document originally requested in 2001 some fifteen to twenty months after they had been requested. *Id.* Similar to this case, the plaintiff contended that the documents were necessary "to show the ability of the [defendants] to pay any Judgment

rendered herein.” *Id.* at 443-44. The Court, however, found the plaintiff’s motion to be untimely, to wit: “Plaintiff has known about this discovery dispute for 18 months, but taken no remedial action.” *Id.* at 444. The Court further found that the plaintiff’s failure to timely file its motion amounted to a waiver of the discovery issue, since a significant deadline, *i.e.*, the discovery deadline, in the case had passed before the plaintiff sought any relief on the matter, to wit:

Plaintiff’s motion is untimely. Plaintiff has waited 18 months before moving to compel production of documents it seeks. . . . Although Fed.R.Civ.P. 37 does not specify any time limit within which a Motion to Compel must be brought, courts have made it clear that a party seeking to compel discovery must do so in a timely fashion. *Once, as here, a party registers a timely objection to requested production, the initiative rests with the party seeking production to move for an order compelling it. Failure to pursue a discovery remedy in timely fashion may constitute a waiver of discovery.*

*Id.* (emphasis added) (citations omitted); *see also* Fed. R. Civ. P. 26(b)(2)(C)(ii).

The Plaintiffs’ instant Motion suffers the same deficiencies as those involved in the *Continental* case. For example, Plaintiffs filed their lawsuit in 2005, alleging in the original Complaint and the subsequent amendments thereto that they were entitled to punitive damages for Peterson’s alleged conduct. Subsequently, in July 2006, Plaintiffs served their RFP No. 107 on Peterson requesting information regarding Peterson’s “net worth.” Dkt. #1869 at 2. Peterson timely responded to RFP No. 107, made its objections thereto and informed Plaintiffs that it would produce its most current balance sheet, which it did. *Id.* Thereafter, in September 2007, Plaintiffs served their duplicative RFP No. 11, again, requesting information related to Peterson’s “net worth.” *Id.* In response, Peterson incorporated its response and objections to RFP No. 17. *Id.* The responses and objections to both RFP Nos. 107 and 11 remained unchallenged.

In October 2008, some thirteen to twenty-seven months, respectively, after serving the subject RFPs and a mere ten weeks before the (extended) deadline for their damage reports,<sup>8</sup> Plaintiffs, through their South Carolina counsel, requested Peterson to supplement the production for RFP Nos. 117 and 11 and requested additional financial information unrelated to net worth, including but not limited to tax returns. As follow up to this correspondence, the parties arranged a telephone conference in November 2008 to discuss the requested supplement. During the conference, Peterson agreed to produce balance sheets consistent with its prior objections to the subject RFPs. *See* Ex. C. As agreed, Peterson produced the documents on which the parties had agreed. Ex. D.

Thereafter, in early December 2008, Plaintiffs again demanded production of extensive financial information and requested a second conference to discuss the documents produced by Peterson in response to the October 2008 request for a supplemental production. *See* Ex. A. In the course of that conference, the undersigned reasserted Peterson's objections to the subject RFPs and requested extant authority supporting Plaintiffs' untenable position that they were entitled to financial statements beyond those produced.<sup>9</sup> Plaintiffs' counsel conceded that it was

---

<sup>8</sup> Of note, at the time Plaintiffs served the RFPs subject to this Motion, the deadline for Mr. Payne's damage reports submitted by Plaintiffs on January 5, 2009 (*see* Dkt. #1376), was set for **May 1, 2008**, in the original Scheduling Order (Dkt. #1075). The date for the damage report was not extended until after Peterson has submitted its responses and objections to Plaintiffs' September 13, 2007, Requests for Production, which was Plaintiffs' second request for financial information. Nonetheless, Plaintiffs fail to explain why they waited until February 17, 2009, to challenge the objections Peterson made to Plaintiffs' RFPs in 2006, reasserted in 2007 and maintained consistently thereafter, including but not limited to the instant Motion.

<sup>9</sup> In that same conference, the undersigned, on behalf of Peterson, informed Plaintiffs' South Carolina counsel that the information redacted from the supplemental production of balance sheets related to nonresponsive information for cattle operations operated by an affiliated company and, thus, unrelated to Plaintiffs' allegations in this lawsuit. Counsel verbally indicated that they were not interested in the cattle information; and, indeed, they never requested Peterson

reading the same authority referenced by Peterson. Apart from an email communication from Plaintiffs' counsel in December 2008 asserting that the *City of Tulsa* Order discussed above supported their contention, *see* Ex. A, Plaintiffs have had no communications with Peterson or its counsel regarding the subject matter of this Motion or, indeed, regarding the Motion itself.

In any event, Peterson has stood by and reasserted the objections it made to Plaintiffs' initial request for financial information in 2006, thereby placing the onus on Plaintiffs to timely challenge those objections. In turn, Plaintiffs have not explained their two year delay in bringing the instant Motion or their failure to timely challenge Peterson's objections. In the interim, the deadline for filing damage reports expired, without Plaintiffs raising the issues now raised. Accordingly, through their unexplained delay, Plaintiffs have waived this discovery issues, effectively rendering their Motion moot or, alternatively, justifying its denial.

**c. Plaintiffs are not entitled to file a supplemental report and, indeed, their damage expert has formed opinions based on the information already produced**

Finally, Plaintiffs cannot reasonably deny that the information they seek through the instant Motion will be used to bolster and supplement the expert opinions of Mr. Payne, notwithstanding the Court's prior rulings on the issue of supplementation. Accordingly, their Motion should be denied in its entirety on these additional grounds, since the Court has previously determined that supplemental experts opinions will not be looked upon favorably, *see* Dkt. ##1839, 1842, and Plaintiffs have failed to articulate a single reason why Mr. Payne should be allowed to supplement his prior opinions. In the interest of brevity, Peterson joins in and

---

to produce unredacted statements showing the cattle operations. Consequently, the fact that Plaintiffs are requesting this information in their instant Motion for the first time is, besides being contrary to their counsels' verbal representations, sufficient reason to deny Plaintiffs' Motion for their failure to satisfy the meet and confer requirement of Federal Rule of Civil Procedure 37(a)(5)(A)(i) and LCvR37.1.

adopts as its own the arguments set forth in the Cargill Defendants' Response to Plaintiffs' Motion to Compel (Dkt. #1866), including but not limited to the authorities cited therein. *See* Dkt. #1877 at 5-8.

### **III. CONCLUSION**

Plaintiffs' Motion to Compel should be denied in its entirety. First, Plaintiffs have failed to satisfy the requisite meet and confer requirements of the Federal Rules of Civil Procedure and the Local Rules of this Court for consideration of the Motion. In addition, Peterson has produced the financial information required of it under the authority of this Court, without Plaintiffs articulating a single, legitimate reason why Peterson should be required to produce additional information. Moreover, Plaintiffs waived their ability to raise this issue by delaying their Motion for two years after it could have raised the issue and several weeks after purported need for the information passed. Finally, given their unexplained delay, Plaintiffs should not be allowed to supplement and bolster the otherwise unconditioned opinions of their punitive damages expert, since the Court has placed the parties on notice that such supplemental reports will not be looked upon favorably.

Respectfully submitted,

By /s/ Philip D. Hixon

A. Scott McDaniel (Okla. Bar No. 16460) [smcdaniel@mhla-law.com](mailto:smcdaniel@mhla-law.com)  
Nicole M. Longwell (Okla. Bar No. 18771) [nlongwell@mhla-law.com](mailto:nlongwell@mhla-law.com)  
Philip D. Hixon (Okla. Bar No. 19121) [phixon@mhla-law.com](mailto:phixon@mhla-law.com)  
Craig A. Mirkes (Okla. Bar No. 20783) [cmirkes@mhla-law.com](mailto:cmirkes@mhla-law.com)  
McDANIEL, HIXON, LONGWELL & ACORD, PLLC  
320 South Boston Ave., Suite 700  
Tulsa, Oklahoma 74103  
(918) 382-9200

and

Sherry P. Bartley (Ark. Bar No. 79009)  
*Appearing Pro Hac Vice*  
MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, P.L.L.C.  
425 W. Capitol Ave., Suite 1800  
Little Rock, Arkansas 72201  
(501) 688-8800

**COUNSEL FOR DEFENDANT  
PETERSON FARMS, INC.**

### **CERTIFICATE OF SERVICE**

I certify that on the 23rd day of February, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General  
Kelly Hunter Burch, Assistant Attorney General  
J. Trevor Hammons, Assistant Attorney General  
Daniel Lennington, Assistant Attorney General

drew\_edmondson@oag.state.ok.us  
kelly\_burch@oag.state.ok.us  
trevor\_hammons@oag.state.ok.us  
daniel.lennington@oak.ok.gov

Melvin David Riggs  
Richard T. Garren  
Sharon K. Weaver  
David P. Page  
Riggs Abney Neal Turpen Orbison & Lewis

driggs@riggsabney.com  
rgarren@riggsabney.com  
sweaver@riggsabney.com  
dpage@riggsabney.com

Robert Allen Nance  
Dorothy Sharon Gentry  
Riggs Abney

rnance@riggsabney.com  
sgentry@riggsabney.com

Louis W. Bullock  
Robert M. Blakemore  
Bullock Bullock & Blakemore

lbullock@bullock-blakemore.com  
bblakemore@bullock-blakemore.com

Michael G. Rousseau  
Jonathan D. Orent  
Fidelma L. Fitzpatrick  
Motley Rice LLC

mrousseau@motleyrice.com  
jorent@motleyrice.com  
ffitzpatrick@motleyrice.com

Elizabeth C. Ward  
Frederick C. Baker  
William H. Narwold  
Lee M. Heath  
Elizabeth Claire Xidis  
Ingrid L. Moll  
Motley Rice

lward@motleyrice.com  
fbaker@motleyrice.com  
bnarwold@motleyrice.com  
lheath@motleyrice.com  
cxidis@motleyrice.com  
imoll@motleyrice.com

#### **COUNSEL FOR PLAINTIFFS**

Stephen L. Jantzen  
Patrick M. Ryan  
Paula M. Buchwald  
Ryan, Whaley & Coldiron, P.C.

sjantzen@ryanwhaley.com  
pryan@ryanwhaley.com  
pbuchwald@ryanwhaley.com

Mark D. Hopson  
Jay Thomas Jorgensen  
Timothy K. Webster  
Gordon D. Todd  
Sidley Austin LLP

mhopson@sidley.com  
jjorgensen@sidley.com  
twebster@sidley.com  
gtodd@sidley.com



Robert W. George  
L. Bryan Burns  
Tyson Foods, Inc.

robert.george@tyson.com  
bryan.burns@tyson.com

Michael R. Bond  
Erin Walker Thompson  
Dustin R. Darst  
Kutak Rock LLP

michael.bond@kutakrock.com  
erin.thompson@kutakrock.com  
dustin.darst@kutakrock.com

**COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.;  
AND COBB-VANTRESS, INC.**

R. Thomas Lay  
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin  
Frank M. Evans, III  
Lathrop & Gage, L.C.

jgriffin@lathropgage.com  
fevans@lathropgage.com

**COUNSEL FOR WILLOW BROOK FOODS, INC.**

Robert P. Redemann  
Gregory Mueggenborg  
David C. Senger  
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

rredemann@pmrlaw.net  
gmueggenborg@pmrlaw.net  
david@cgmlawok.com

Robert E. Sanders  
E. Stephen Williams  
Young Williams P.A.

rsanders@youngwilliams.com  
steve.williams@youngwilliams.com

**COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.**

George W. Owens  
Randall E. Rose  
The Owens Law Firm, P.C.

gwo@owenslawfirmmpc.com  
rer@owenslawfirmmpc.com

James M. Graves  
Gary V. Weeks  
Woody Bassett  
K.C. Dupps Tucker  
Bassett Law Firm

jgraves@bassettlawfirm.com  
gweeks@bassettlawfirm.com  
wbassett@bassettlawfirm.com  
kctucker@bassettlawfirm.com

**COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.**

John R. Elrod  
Vicki Bronson  
P. Joshua Wisley  
Conner & Winters, P.C.

jelrod@cwlaw.com  
vbronson@cwlaw.com  
jwisley@cwlaw.com

Bruce W. Freeman  
D. Richard Funk  
Conner & Winters, LLLP

bfreeman@cwlaw.com

**COUNSEL FOR SIMMONS FOODS, INC.**

John H. Tucker  
Colin H. Tucker  
Theresa Noble Hill  
Kerry R. Lewis  
Rhodes, Hieronymus, Jones, Tucker & Gable

jtuckercourts@rhodesokla.com  
chtucker@rhodesokla.com  
thillcourts@rhodesokla.com  
klewis@rhodesokla.com

Terry W. West  
The West Law Firm

terry@thewesetlawfirm.com

Delmar R. Ehrich  
Bruce Jones  
Krisann Kleibacker Lee  
Todd P. Walker  
Christopher H. Dolan  
Melissa C. Collins  
Faegre & Benson LLP

dehrich@faegre.com  
bjones@faegre.com  
kklee@baegre.com  
twalker@faegre.com  
cdolan@faegre.com  
mcollins@faegre.com

Dara D. Mann  
McKenna, Long & Aldridge LLP  
**COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC**

dmann@mckennalong.com

Michael D. Graves  
D. Kenyon Williams, Jr.  
**COUNSEL FOR POULTRY GROWERS**

mgraves@hallestill.com  
kwilliams@hallestill.com

William B. Federman  
Jennifer F. Sherrill  
Federman & Sherwood

wfederman@aol.com  
jfs@federmanlaw.com

Charles Moulton  
Jim DePriest  
Office of the Attorney General

charles.moulton@arkansag.gov  
jim.depriest@arkansasag.gov

**COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL  
RESOURCES COMMISSION**

Carrie Griffith  
**COUNSEL FOR RAYMOND C. AND SHANNON ANDERSON**

carrie.elrodlaw@cox-internet.com

Gary S. Chilton  
Holladay, Chilton & Degiusti, PLLC

gchilton@hcdattorneys.com

Victor E. Schwartz  
Cary Silverman  
Shook, Hardy & Bacon, LLP

vschwartz@shb.com  
csilverman@shb.com

Robin S. Conrad  
National Chamber Litigation Center, Inc.

rconrad@uschamber.com

**COUNSEL FOR AMICI CURIAE CHAMBER OF COMMERCE FOR THE U.S. AND THE  
AMERICAN TORT REFORM ASSOCIATION**

Richard C. Ford  
LeAnne Burnett  
Crowe & Dunlevy

fordr@crowedunlevy.com  
burnettl@crowedunlevy.com

**COUNSEL FOR AMICUS CURIAE OKLAHOMA FARM BUREAU, INC.**

M. Richard Mullins  
McAfee & Taft

richard.mullins@mcafeetaft.com

James D. Bradbury  
James D. Bradbury, PLLC

jim@bradburycounsel.com

**COUNSEL FOR AMICI CURIAE TEXAS FARM BUREAU, TEXAS CATTLE FEEDERS ASSOCIATION, TEXAS PORK PRODUCERS ASSOCIATION AND TEXAS ASSOCIATION OF DAIRYMEN**

Mia Vahlberg  
Gable Gotwals

mvahlberg@gablelaw.com

James T. Banks  
Adam J. Siegel  
Hogan & Hartson, LLP

jtbanks@hhlaw.com  
ajsiegel@hhlaw.com

**COUNSEL FOR AMICI CURIAE NATIONAL CHICKEN COUNCIL, U.S. POULTRY & EGG ASSOCIATION AND NATIONAL TURKEY FEDERATION**

John D. Russell  
Fellers, Snider, Blankenship, Bailey & Tippens, P.C.

Jrussell@fellerssnider.com

William A. Waddell, Jr.  
David E. Choate  
Friday, Eldredge & Clark, LLP

waddell@fec.net  
dchoate@fec.net

**COUNSEL FOR AMICUS CURIAE ARKANSAS FARM BUREAU FEDERATION**

Barry G. Reynolds  
Jessica E. Rainey  
Titus Hills Reynolds Love Dickman & McCalmon

reynolds@titushillis.com  
jraine@titushillis.com

William S. Cox, III  
Nikaa B. Jordan  
Lightfoot, Franklin & White, LLC

wcox@lightfootlaw.com  
njordan@lightfootlaw.com

**COUNSEL FOR AMICUS CURIAE AMERICAN FARM BUREAU FEDERATION AND NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

J.D. Strong  
Secretary of the Environment  
State of Oklahoma  
3800 North Classen  
Oklahoma City, OK 73118  
**COUNSEL FOR PLAINTIFFS**

Thomas C. Green  
Sidley Austin Brown & Wood LLP  
1501 K Street NW  
Washington, DC 20005  
**COUNSEL FOR TYSON FOODS, INC.,  
TYSON POULTRY, INC., TYSON  
CHICKEN, INC.; AND COBB-VANTRESS,  
INC.**

Dustin McDaniel  
Justin Allen  
Office of the Attorney General of Arkansas  
323 Center Street, Suite 200  
Little Rock, AR 72201-2610  
**COUNSEL FOR THE STATE OF  
ARKANSAS AND THE ARKANSAS  
NATURAL RESOURCES COMMISSION**

/s/ Philip D. Hixon